

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

vs : 3:16-CR-254

DAVID D. KLEPADLO, ET AL

BEFORE: THE HONORABLE MALACHY E. MANNION

PLACE: COURTROOM NO. 4

PROCEEDINGS: SENTENCING

DATE: WEDNESDAY, OCTOBER 28, 2020

APPEARANCES:

For the United States:

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~~ALL INFORMATION CONTAINED
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1 THE COURT: Good morning. All right. This is the
2 matter of the United States of America against David Klepadlo
3 and David Klepadlo Associates. The criminal numbers are
4 3:CR-16-254-01 and 02. Today is the date for sentencing in
5 this case. Now, before we get into that, Mr. Klepadlo, are you
6 under the influence of any drugs, alcohol, intoxicants or
7 medications that would make you unable to understand the
8 proceedings here today?

9 THE DEFENDANT: No, sir.

10 THE COURT: All right. There's been a presentence
11 report prepared in the case. There's been a number of
12 addendums to the presentence report. There have been
13 sentencing memorandums filed by both the government counsel and
14 defense counsel. Have you had an opportunity to review those
15 documents prior to today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Has counsel had sufficient
18 time to discuss the presentence report and the sentencing
19 memorandums and addendums to the presentence report with your
20 client?

21 MS. LOWRY: Yes, Your Honor.

22 THE COURT: Has the government had sufficient time to
23 do that?

24 MS. OLSHEFSKI: Yes, Your Honor.

25 THE COURT: All right. Now, it's my understanding

1 there are still some outstanding objections to the contents of
2 the presentence report. So we are going to handle that first,
3 and then we will move on after that. So, counsel, they are
4 your objections, so we will start with you.

5 MS. LOWRY: Your Honor, may I stand or --

6 THE COURT: You can stand or sit, whatever makes you
7 comfortable.

8 MS. LOWRY: I will remain seated. Our remaining
9 objections are with respect to the enhancement under 2 B. 1.2
10 B. 1 A. That enhancement -- so under these circumstances, Mr.
11 Klepadlo pled guilty to a false statement conviction under the
12 Clean Water Act, and under the guideline the only time when
13 enhancements under 2 B. 1.2 B. 1 through 4 come in is if the
14 record keeping event, which is the false statement offense,
15 reflected an effort to conceal a substantive environmental
16 offense. Judge Caputo a year ago found that his -- my client's
17 offense did -- an effort to conceal a substantive offense. But
18 it's important to note what that substantive offense was that
19 Judge Caputo articulated. The substance offense was his
20 failure to manage the plant, a failure to go and take samples
21 and take P. H. testing. So that said, that's kind of our
22 baseline.

23 That's the substantive offense we're talking about.
24 We're not talking about discharges that he was -- you know, for
25 example, sometimes the defendant might submit a false D. M. R.

1 because they wanted to conceal discharges that exceeded the
2 permitted pollutants. That's not the case here. So with that
3 said, that's why we're still objecting to B. 1 A. because we
4 think that that enhancement only really applies when we're
5 dealing with a knowing offense where actual pollutants are
6 going into the environment. Here B. 4 we are not objecting to
7 that because that -- that enhancement applies when there is a
8 violation of a permit. That clearly applies here. But with
9 respect to B. 4, we are asking for a two-level reduction under
10 the application notes.

11 THE COURT: Note eight.

12 MS. LOWRY: And in addition, if Your Honor does apply
13 the six-point enhancement under B. 1 A., we would also be
14 asking for a two-level reduction.

15 THE COURT: Okay. All right. Counsel?

16 MR. HARRELL: Your Honor, may I?

17 THE COURT: We're socially distanced, so you can.

18 MR. HARRELL: Thank you, Your Honor. My name is
19 Martin Harrell. I'm a special assistant United States
20 attorney. I'm a lawyer with the Environmental Protection
21 Agency Regional Office in Philadelphia. So I don't know -- do
22 you want us to address just 2 Q. 1.2 B.1's applicability or
23 also get into the guided departure issue at this time?

24 THE COURT: Well, you can do both. I have read
25 through your sentencing memorandum that covers your arguments

1 on both of those topics, but you're welcome to address them as
2 you see fit in light of counsel's addressing her aspect of it
3 or her position on it.

4 MR. HARRELL: Thank you, Your Honor. So with regards
5 to whether 2 Q. 1.2 B. 1 applies at all, our first argument as
6 we set forth is that Judge Caputo already decided that more
7 than a year ago, and I won't belabor those arguments here.
8 With regards to the false D. M. R.s, the false D. M. R.s cover
9 up the fact there was lack of sampling. There was lack of
10 anyone coming to the plant to do any operation and maintenance
11 for almost -- for most of a six-month period. False D. M. R.s
12 were continually submitted month after month, year after year.

13 The permit makes it clear on its face that it is
14 illegal to discharge permits unless -- or pollutants unless you
15 do so in compliance with the permit. So every day where a
16 discharge occurred or there was wasn't sampling was an illegal
17 discharge of a pollutant into the water in the United States.
18 In addition, Judge Caputo's order made it clear that he
19 considered the relevant conduct charged in the two-year
20 conspiracy count in count one as well as the substantive
21 failure to operate and maintain the plants in counts two and
22 three, that failure to operate and maintain as demonstrated by
23 the numerous photographs that were attached to the government's
24 original sentencing memo make clear that there were discharges
25 into the environment that led to the growth of sewage fungus,

1 bloodworms that thrive in polluted water outside the confines
2 of the plant and into the environment.

3 And for those reasons we believe that 2 Q. 1.2 B. 1
4 does apply and there should be a six-level enhancement. As for
5 the guided departures, the government discussed in pretty
6 detailed fashion in its supplemental sentencing memo why the
7 Court should not grant those. The two departures are
8 different. There are four factors under the 2 Q. 1.2 B. 1
9 analysis having to do with actual harm, having to do with the
10 quantity and nature and duration of the pollutants, the type of
11 pollutant and the risk that was involved. The defendant in its
12 supplemental sentencing memo characterized the discharges at
13 small, and we went back, and we looked at the actual number of
14 -- amount of -- average amount of volume that was generated on
15 a specific day.

16 THE COURT: Six million gallons from Greenfield
17 Township and Benton Township two million gallons roughly.

18 MR. HARRELL: Correct, Your Honor. That's not small.
19 These are small streams. We are not talking about the
20 Susquehanna here. So that amount of sewage just in terms of
21 the quantity factor, which is applicable to both guided
22 departures, it's not a small amount that was being discharged
23 without anyone coming to the plant day after day and barely at
24 all for a six-month period.

25 Then you take into account the discharges that were

1 happening due to the failure to operate and maintain the plant
2 generally. Again, the growth and pollution that was occurring
3 in the receiving streams, and so the risk that was posed -- you
4 have to keep in mind D. E. P. is relying on people like Mr.
5 Klepadlo to perform an essential government and public service.

6 THE COURT: I get you, and I am going to give you a
7 chance to speak as to sentence in general. I want to just
8 focus on B. 1 A. and the B. 4 and footnotes 5 and footnotes 8
9 as it relates to their objection only.

10 MR. HARRELL: I was just getting to the risk factor,
11 Your Honor, that's applicable to the guided departure under
12 note five. That is, there are approximately 10,000 permitted
13 facilities in -- P. D. S. facilities in Pennsylvania. D. E. P.
14 has approximately 33 inspectors. It is the operator, whether
15 they be an employee of the permittee or a contractor of the
16 permittee that formed the backbone of the regulatory process
17 under this program and formed the backbone of honest reporting
18 so that D. E. P. can look at data and decide where to spend its
19 limited resources, and failure to provide accurate data to the
20 D. E. P. misled D. E. P. about the nature of the circumstances
21 here but also misled the municipalities, the rural
22 municipalities who are employing Mr. Klepadlo for his
23 expertise, his knowledge, his training. They relied on him.

24 They put their faith in him, and that presented a
25 risk to the public, presented a risk to the municipalities, and

1 they didn't get what they paid for in terms of risk. Then
2 again you're talking about human waste here. We are not
3 talking about some innocuous substance, and don't think anyone
4 needs an education into the potential harms that can be present
5 when human sewage is not treated properly. Thank you, Your
6 Honor.

7 THE COURT: Anything else you want to add?

8 MS. LOWRY: Yes, Your Honor. I apologize I didn't
9 introduce myself. Meredith Harrell on behalf of the
10 defendants.

11 THE COURT: You have entered your appearance.

12 MS. LOWRY: With Mr. Bergere will step in and --

13 THE COURT: I'm sorry, who?

14 MR. BERGERE: Bergere. I am co-counsel with
15 Armstrong Teasdale in Philadelphia. And thank you for having
16 us today. Just on a couple of the those points, I think the
17 government is conflating some of the facts, which are important
18 because --

19 THE COURT: I only want to talk about the note five
20 and note eight in the objections at this point, not the general
21 discussion of sentence or your positions on sentence or
22 additional facts, relevant conduct, not relevant conduct or
23 things of that nature at this time, okay. Anything else
24 related to the issue of the objections?

25 MS. LOWRY: Yes, Your Honor. So I think the point

1 word we have been trying to make here is that we are not
2 contesting there was a risk. We are not contesting there was a
3 serious concern about what was going on. What we're saying is
4 there was no real actual tangible harm that was done to the
5 environment to the river. This isn't a type of case -- and I
6 don't think the government contests this -- there weren't dead
7 fish or dead birds. That's all we're saying here.

8 THE COURT: There were bloodworms, tampons, condoms,
9 other things in there that one would not consider to be part of
10 good fresh water. Do you agree with that?

11 MS. LOWRY: I will defer to my co-counsel.

12 MR. BERGERE: Those were not found in the creek.
13 They were in the riprap channel, which is part of the facility.

14 THE COURT: That leads to the creek.

15 MR. BERGERE: It does, but again, as a regulatory
16 matter, this stream is not impaired. There's a 303 D. list the
17 Court can judicial notice of the fact that the stream despite
18 all of the bad conduct that is being alleged by the government,
19 as a regulatory matter the stream is not impaired, it's not
20 been moved to the impaired status. It's not on 303 D. list
21 under the Clean Water Act. It's not in the 305 B. report under
22 the Clean Water Act which the Commonwealth prepares each year
23 and updates each other. And at no time either any time from
24 2003 forward up to day has any action been taken by the
25 government to change the stream categorization as a result --

1 THE COURT: You said 2003. Did you mean 2013?

2 MR. BERGERE: 2013. It's actually been 2003, too,
3 but that's not the relevant time frame, Your Honor.

4 THE COURT: Having listened carefully to your
5 arguments, I am overruling your objections. I believe Judge
6 Caputo did make the appropriate determinations in his
7 memorandum and order that he filed prior to this related to
8 your arguments as to 2 Q. 2.1 B. 1. As to the requests under 2
9 Q. 1.2 B. 1 A. and B. 4, more particularly the application of
10 either footnote 5 to B. 1 A. or footnote 8 to B. 4, the Court
11 has the authority in those circumstances to either depart up by
12 two or depart down by two as a maximum, so it can go either
13 way. I don't find any departure is appropriate under the
14 circumstances. I think that the guideline was calculated
15 properly. It appears to me that under footnote 5 that even
16 just the duration of the conduct is concerning in this
17 particular case, and I am not only talking about the actual
18 charged duration, but the statements by Mr. Klepadlo that this
19 was the process that was used over a course of 20 years. And
20 so that is very concerning to me.

21 In addition as to the footnote 8, I think that the
22 nature and quantity of the substance involved and the risk
23 related to the offense was substantial and frankly more
24 devastating than is actually listed or tested. In reviewing
25 Mr. Long, your expert's report, I find that even in his

1 calculations he didn't appear to use much of the data from Mr.
2 Klepadlo, and it concerns me. I think the guidelines have been
3 properly calculated in this particular case, and I am going to
4 overrule the objections to the guidelines themselves.

5 What we're going to do next is we're going to cover a
6 couple areas. First, I am going to ask counsel if there are
7 any requests for a formal departure under an enumerated section
8 of the guidelines. We'll talk about -- if there are any of
9 those. Then after we finish with that, I'm going to ask
10 counsel to incorporate whatever arguments they wish to make for
11 a variance from the guidelines with whatever other general
12 information or presentations they wish to make in terms of
13 sentencing. When we get to that stage, the process will be
14 I'll first be asking counsel for their arguments related to
15 variance and/or any additional information.

16 Then I will ask Mr. Klepadlo if there's anything he
17 wishes to say before I impose sentence, and then finally I will
18 ask the government if there's anything they wish to say before
19 I impose sentence. So we're going to begin first with any
20 requests for a departure under an enumerated section of the
21 guidelines, and we will start with the defense counsel.

22 MS. LOWRY: No, Your Honor, we don't have any
23 departure arguments.

24 THE COURT: All right. With respect to the
25 government?

1 MS. OLSHEFSKI: No, Your Honor.

2 THE COURT: All right. So then we will move on, as I
3 said, the second aspect, which is a more encompassing aspect of
4 sentence where I'm going to -- and I have read very carefully
5 on multiple occasions not only the two presentence reports
6 since one was technically done for the corporate entity. I've
7 also read through all of your filings. I have read through all
8 of Judge Caputo's orders and memorandums on the case over the
9 period of time.

10 I have read through the government's sentencing
11 memorandums as well, and so I am familiar with those. But that
12 being said, I am not in any way limiting you to be able to say
13 what it is you think you would want to say during a sentencing
14 procedure since it's clearly an important aspect of the case.
15 So we will begin as I mentioned first with defense counsel.

16 MS. LOWRY: Your Honor, I do want to mention we have
17 two character witnesses. I don't know --

18 THE COURT: You have what?

19 MS. LOWRY: Character witnesses we would like to
20 present. I don't know the order of things you would like us to
21 --

22 THE COURT: However you would like to do that during
23 the course of whatever presentation you're going to make. With
24 respect to the character witnesses, my usual practice is just
25 have them come to the podium -- which we don't have -- I would

1 ask if one the C.S.O.s would come and turn the podium. We had
2 it for a three-week jury trial we just finished facing the
3 jury. Just have it turned to the back so people can use it.
4 My practice generally as you call a character witness, they can
5 come up to the podium, and then we will ask them to put their
6 full name and spell their last name on the record and whatever
7 it is they wish to say. All right.

8 MS. LOWRY: I would be happy to present them now
9 unless you want to --

10 THE COURT: However you want to do it.

11 MS. LOWRY: Okay. I think we will call Linda
12 Klepadlo, the defendant's wife.

13 THE COURT: Mrs. Klepadlo, if you'd come forward,
14 please. If you'd state your full name and spell your last name
15 for us, please.

16 MS. KLEPADLO: Linda --

17 MR. BERGERE: May we have her daughter stand with
18 her?

19 MS. KLEPADLO: K-le-p-a-d-l-o.

20 THE COURT: All right, Ms. Klepadlo.

21 BY MS. LOWRY:

22 Q. You can look at me over here. Linda, can you tell the
23 Court how long have you been married to Dave?

24 A. Forty-three years.

25 Q. Okay. And you're a retired nurse, correct?

1 A. Yes, retired this year.

2 Q. Okay. And you understand that you're here for Dave's
3 sentencing hearing?

4 A. Yes.

5 Q. And do you remember writing a letter to the Court,
6 character letter?

7 A. I do.

8 THE COURT: I read it.

9 BY MS. LOWRY:

10 Q. Is Dave embarrassed about what he's done?

11 A. Absolutely.

12 Q. Has this -- would you say it's consumed him for the last
13 four years?

14 A. Yes, yes, both of our relationships.

15 Q. Yeah. And how have his convictions impacted his
16 reputation and your reputation in the community?

17 A. It's ruined. I mean, he lost all of his jobs. I mean,
18 you know, everybody got rid of him as far as treatment plants
19 and that, and it's just -- it took away everything. It
20 affected our whole life.

21 Q. On a personal level, how has it impacted him, his health,
22 mental health?

23 A. His health has definitely been affected. He has had such
24 stress and this cardiac problem that he's had and everything,
25 it just -- I am sure it compounded it. I'm a nurse, and I know

1 what stress does. And it's really -- I mean, it has done a lot
2 to me, and it just -- it hasn't been good.

3 Q. And, you know, you kind of mentioned obviously he lost his
4 business. How has this impacted your family financially?

5 A. Definitely. I mean, he has no income coming in now. You
6 know, I was a nurse until March of this year. I left, and so I
7 don't have income coming in anymore either. And because of
8 this health problems, I don't even want to go back per diem as
9 a nurse because I don't want to expose him to any COVID or
10 anything. I mean, it's getting worse and worse, the situation,
11 and it's not healthy for him.

12 Q. So Dave is a recovering addict, right?

13 A. Yes.

14 Q. Alcoholic?

15 A. Yes.

16 Q. And he has a sponsor, right?

17 A. He does.

18 Q. How often does he speak to his sponsor?

19 A. I would say at least five, six times a week.

20 Q. Okay. How many times a week does he go to A. A. meetings?

21 A. Lately almost every day, every morning. He's on the Zoom
22 call.

23 Q. Do you think lately because of this matter and --

24 A. It has gotten worse. The stress keeps getting worse and
25 worse and worse.

1 Q. Now, Dave provides significant support to your daughter
2 who is at home with you, Lorissa. This is your daughter
3 Christine?

4 A. Yes, she's from California. It's my daughter at home who
5 is disabled.

6 Q. And Dave is part of her everyday well being, right?

7 A. Yes, he does -- we share the burdens. We cook. We do her
8 laundry. We do trips for her, numerous drugs -- to the drug
9 store -- and I mean it's constant -- and take her to
10 appointments, and they're not all in the area. For instance,
11 we got to take her to Philadelphia for her skin condition that
12 nobody seems to be able to handle.

13 Q. Before Dave was charged in this matter, would you say he
14 was proud of his accomplishments as an engineer?

15 A. Yes, he was a pillar in the community.

16 Q. Do you think -- since his convictions, what has that done
17 to his sense of self-worth and his accomplishments?

18 A. It has ruined it. I mean, he was always -- people used to
19 ask him to do the jobs. He didn't even want to take on all of
20 the work that they wanted him to do. But because he was -- he
21 was always professional and he always remembered and tried to
22 do the best for anything -- anybody in our community.

23 Q. So I'm going to ask you two simple questions. Is Dave
24 perfect?

25 A. As an engineer?

1 Q. As a person?

2 A. Yes --

3 Q. No, is he a perfect person?

4 A. Perfect person? Is that what you said?

5 Q. Does he make mistakes?

6 A. Oh, he's not perfect. Nobody is perfect. I mean,
7 everybody makes some mistakes. But I mean, he was always very
8 professional and really was careful in anything he did.

9 Q. Dave is a good man?

10 A. Definitely.

11 MS. LOWRY: No further questions.

12 THE COURT: Anything you want to ask, the government?

13 MS. OLSHEFSKI: No, Your Honor.

14 THE COURT: Thank you, Ms. Klepadlo.

15 MS. KLEPADLO: Thanks.

16 MS. LOWRY: Your Honor, I would also like to call
17 Tony Quinn, who is in the audience.

18 THE COURT: State your full name and spell your last
19 name for the record.

20 MR. QUINN: Anthony Quinn. Can I remove this?

21 THE COURT: Yes.

22 BY MS. LOWRY:

23 Q. Hi, Tony. You know we're here for Dave's sentencing
24 hearing?

25 A. Yes.

1 Q. You've known Dave for many years, correct?

2 A. I do.

3 Q. Do you know how many years?

4 A. I've known him many years. I have known him very well in
5 the past ten years since he's in recovery.

6 Q. You're his sponsor?

7 A. I am.

8 Q. What's your occupation?

9 A. I was an orthodontist until last March. I retired now.

10 Q. Do you remember writing a letter to the Court on behalf of
11 Dave?

12 A. I do.

13 Q. How many years sober are you?

14 A. Thirty-four.

15 Q. Can you describe to the Court Dave's commitment to his
16 sobriety in the last ten years?

17 A. Normally I work with more health professionals I do
18 outside, but in Dave's case I have known him, and he has been
19 exemplary in the recovery. He took it from day one, and he
20 does work hard on it. He talk to him five or six days a week.
21 He's at meetings at least five or six times a week but
22 presently because of COVID every morning on Zoom.

23 Q. He's helped others with addiction, correct?

24 A. He has.

25 Q. Now, you speak to Dave every day, right?

1 A. I do.

2 Q. As a sponsor you know him on a deep level, correct?

3 You're not talking about the weather. You're talking about
4 deeper issues when you talk to him?

5 A. Yes.

6 Q. Okay. So you know him pretty well?

7 A. I do.

8 Q. Probably better than a lot people -- in fact, maybe most
9 people in his life?

10 A. Yes, I would think.

11 Q. I want to talk about you would -- you know how his
12 convictions and his conduct here -- how it's impacted him. So
13 I just want to ask some questions about that. Do you know how
14 this matter has impacted his reputation?

15 A. I think it's devastated him. I think that he did have a
16 reputation before this happened because he did represent a
17 number of agencies, but he lost everything after this occurred.

18 Q. Do you know how it's impacted his family?

19 A. That has been more devastating I think because his wife
20 really has been under a tremendous amount of stress. She has a
21 daughter who has some physical problems that never been fully
22 diagnosed and have been all over trying to find it. She is now
23 living at home, and it's been a problem for him, but he's been
24 dedicated to it. On top of it, he cared for his mother, who
25 passed away a year ago. He was responsible for her and visited

1 every day. It was a dutiful son and faithful husband to his
2 children and to his wife.

3 Q. You know his lost his business?

4 A. Yes.

5 Q. Are you able to tell the Court how -- if you do know how
6 this impacted him financially?

7 A. Well, I think his wife pointed out that they have lost
8 everything. What I was most concerned about with Dave is that
9 people in recovery -- most alcoholics tend to live in fear
10 based thinking and also in poor projection. Alcoholics do not
11 project out positively. So this whole experience has been a
12 very negative -- and I really probably try to hold his hand a
13 lot about worrying about the outcome of everything. I tell him
14 if he does the next right thing, things will work out some way.
15 But he has been very dutiful in calling me and -- except on the
16 one occasion that caused this whole problem. Other than that
17 he has been very faithful to me as a sponsor, which did not
18 happen very often with alcoholics and addicts.

19 Q. Would you say that he is remorseful?

20 A. Yes, I think he went through all the stages that we all do
21 coming from these things. I think overall he has been
22 remorseful for what happened, what he caused, the difficulties
23 for his family, for this Court, for his community, for his
24 business. It's been a devastation for him, and I do feel that
25 he is penitent. You know, he's made -- he tried to make amends

1 where he could, but it has been difficult for everybody.

2 Q. During the pandemic A. A. has had meetings on Zoom, right?

3 A. Correct.

4 Q. He's gone how many days a week?

5 A. Every day.

6 Q. Can you explain the importance for alcoholics -- but
7 particularly Dave, can you explain the importance of regular
8 meetings and open communication with you?

9 A. Well, yes. As I said to you, alcoholics including myself
10 tend to have more fear based thinking than they do normal
11 thinking. So when in situations like he was in, they tend to
12 react instead of respond, and then the mistakes are made. It's
13 after the fact. So it is important for alcoholics to talk to
14 others. We -- I cannot see myself. I simply can't. I can see
15 the other alcoholic. I can see them clearly, but I can't see
16 myself. So the reason that A. A. works is because alcoholics
17 together are able to see their own behavior patterns when in
18 fact their own way they can't, which is why one of the steps is
19 for when you're wrong to promptly admit it, and unfortunately
20 we are wrong, and it's necessary for us to make amends whenever
21 it happens.

22 And I think -- in these A. A. meetings he does not talk
23 about very specifically what happened here because it's not
24 appropriate for that to be talked about. What we talk about in
25 A. A. is, what are you thinking, how are you feeling and how we

1 are reacting to those around you, whether it's family or
2 business or whatever. He has kept it general. When he talks
3 to me, I understand more of the problems he's created.

4 Q. If he didn't have access to the group meetings and access
5 to you as his sponsor, how would that impact his recovery?

6 A. Alcoholics are escapists. There was a judge in New York
7 who I used to listen to on tape who said that when he was born
8 and he came out of the birth canal it was just too loud. And
9 so the -- most of his life he drank to quiet it, and I think
10 that's the way we are. Life is too loud, and so my biggest
11 concern for Dave would be -- which happens to many alcoholics
12 who relapse over time because of the stress of this. It's
13 important for me to talk to him on a daily basis. As I said,
14 we are escapists. And when life gets too hard, it's back to
15 the alcohol or drinking. That was -- Dave's drug of choice was
16 alcohol.

17 Q. I have a couple more questions. You said something about
18 making amends. Especially with this matter, has he confided in
19 you about making amends?

20 A. Yes, you know, as I said before, it's hard for us to see
21 ourself. Our first thing to do is become defensive.
22 Alcoholics are good at becoming defensive and becoming victims.
23 It takes them talking to somebody else to recognize that's not
24 the truth of their life. That's not what is happening. And to
25 recognize they have to make amends even if it's ten percent of

1 the problem, they have to make the amends. In Dave's case what
2 really concerned me more was the amount of stress, and his
3 cardiac situation really has concerned me all along. And I
4 understood recently he was advised to have surgeries on his
5 legs to prevent clotting, which would exacerbate his cardiac
6 problem.

7 So his health has been compromised quite a bit with this
8 thing. That was my big concern over the last four years that
9 he would react inappropriately, which he did in this one
10 circumstance, but he would react inappropriately because of the
11 stress he was feeling.

12 Q. Would you say Dave wants to be a productive member of
13 society again and get past this?

14 A. Well, yeah, you know, this been a very difficult -- I am
15 sure the Court recognizes that for anybody in these situations.
16 I think he wants to get back to his life for his children and
17 wife and grandchildren. I think he's been willing to face up
18 with what happened to be sorry for it and hopefully move on in
19 his life.

20 MS. LOWRY: No further questions, Your Honor.

21 THE COURT: Any questions from the government?

22 MS. OLSHEFSKI: None, Your Honor.

23 THE COURT: Thank you, Dr. Quinn, and thank you for
24 your work with A. A.

25 MS. LOWRY: Your Honor, I wanted to point out last --

1 well, the sentencing hearing in September of 2019 there were
2 quite a few people here for Dave, but because of the pandemic
3 they didn't come. But there were about 15 people here, and
4 today Dave's daughter came from California, Christine. She's
5 here, Linda, his sister and brother-in-law, Ann Marie and Matt.
6 They are in the audience here. I am happy to give argument if
7 Your Honor --

8 THE COURT: Okay. Please. You don't have to stand
9 -- you can -- whatever makes you comfortable. If you like to
10 stand, stand, but you don't have to stand.

11 MS. LOWRY: So I don't want to completely repeat our
12 sentencing memorandum. But, Your Honor, I think there's kind
13 of two key things going on here. The first issue is that when
14 you look at defendants who are convicted of this exact same
15 offense, not the witness tampering, but the Clean Water Act
16 offense, every one of them gets probation unless they also have
17 another conviction, another Clean Water Act conviction, or if
18 there are multiple false statement convictions.

19 You know, the Clean Water Act offense here, the false
20 statement act, that's the offense that's driving the guideline
21 range to be so high, not the witness tampering. I included 23
22 cases in my original and Dave's original sentencing memoranda
23 kind of giving you a picture. I also found two others last
24 night. I kind of stumbled into them, two defendants, one was
25 sentenced in August 2019, the other was September 2019. One

1 was a sewage water treatment plant owner. The other one was
2 manager of a wastewater treatment facility. The facts are
3 nearly the same. They falsified data and D. M. R.s. You know,
4 in one case it was -- the defendant admitted that untreated
5 sewage went into the environment. That person got five years
6 of probation. The other person got 36 months' probation. I am
7 happy to provide citations to the Court as well.

8 It's -- the first person is Timothy Pierre, the
9 Northern District of West Virginia, 3:18-CR-66, and the second
10 case is Monica Borowicz, Eastern District of Virginia,
11 2:19-CR-00067. I wanted to point out that the government's
12 supplemental memoranda they tried to distinguish Klepadlo from
13 a few different cases in the E.D.P.A. I wanted to point out
14 that, you know, a lot of -- the distinct factor that the
15 government identified was Dave's obstruction offense.

16 But when you look at these cases, when you look at
17 the cases that the government is comparing or distinguishing
18 from Dave, their guideline ranges are based on the Clean Water
19 Act guideline, just like how Dave's guideline range is based on
20 the Clean Water Act. In fact, one in particular, Crafton in
21 the Eastern District of Pennsylvania received -- I think it was
22 probation and home confinement mixed together -- very similar
23 facts as here, and the guideline range was actually -- the
24 Court applied the six-point enhancement and the four-point
25 enhancement. So Crafton was in zone D., just like Dave, and

1 Crafton got probation. A lot of this information isn't public,
2 but from reading the facts of these cases, I can only assume a
3 lot of these defendants were also in zone D. and they all got
4 probation. Another key fact here is -- some of these other
5 defendants, Stomphill and Wellery, they concealed actual
6 exceedances into the environment. So those defendants knew
7 that pollutants that exceeded the permitted limits were going
8 into the environment, and they concealed that. That is not
9 what we have here.

10 We have something -- I am not downplaying Dave
11 Klepadlo's conviction -- but what his conviction and the
12 substantive offense that Caputo identified is different from
13 knowingly releases pollutants that exceed the permitted limits
14 into the environment, and those defendants were sentenced to
15 probation. And I -- I just wanted to point that out to the
16 Court. The other thing, and I -- this is also in the original
17 sentencing memorandum -- defendants who are convicted of some
18 of the worst substantive offenses including knowingly dumping
19 raw sewage into the environment, they don't -- they get less
20 than 37 months' imprisonment. And the government is asking for
21 37 months' imprisonment for Dave Klepadlo when he didn't --
22 he's not convicted of a substantive offense.

23 You know, while the substantive guideline
24 enhancements are -- apply, I do think the Court should take
25 into account that he pled guilty to a false statement charge.

1 It was a D. M. R. that was dated January 14th, 2014, and that
2 has to mean something. So that's kind of the first part of the
3 variance argument here. The second variance argument is Dave's
4 health and the fact that we're in the middle of a pandemic, and
5 I looked at the B. O. P. statistics last night. And all of the
6 -- I don't know if you remember in my supplemental memorandum
7 --

8 THE COURT: I read all of your statistics in there
9 concerning the different institutions, and I actually get
10 reports on that daily.

11 MS. LOWRY: Yeah, I am sure you probably still get
12 compassionate release petitions. And all of those facilities
13 that are listed in the supplemental sentencing memorandum
14 currently have active COVID cases except for one --

15 THE COURT: Except the numbers are significantly down
16 from what you had in your original sentencing memorandum, but
17 go ahead.

18 MS. LOWRY: You mean the active cases?

19 THE COURT: Yes, even completed cases -- well,
20 completed cases are completed, but active cases where people
21 have recovered.

22 MS. LOWRY: I think, Your Honor -- I notice sometimes
23 some of the numbers even with the recovered statistics change
24 -- change a lot. I think the issue -- I think the B. O. P. is
25 working hard to figure out it -- but I think there's been a

1 serious lack of testing going on, and just recently there's
2 been more testing of asymptomatic inmates. And I think the
3 point that I'm making here is that Dave isn't a defendant
4 coming before you saying his hypertension will give him maybe,
5 you know, make him more sick than someone else who doesn't have
6 hypertension.

7 He has serious heart conditions that just recently
8 our medical community is realizing they might be worse than
9 lung diseases. Heart conditions and COVID have a deadly
10 combination. His chances of contracting COVID in prison right
11 now are very high, and he's the type of person who will end up
12 on a ventilator no doubt about it, and that's what -- and when
13 you take that and you compare it to everything else, the
14 comparative sentencing analysis, you know, the fact that he has
15 been supervised for the last four years, he -- he's 65. He
16 surrendered his license. He's not going to reoffend because he
17 couldn't reoffend because he doesn't have his license. He
18 suffered greatly financially. His reputation, he lost his
19 business. He lost his, you know, everything.

20 You know, his family is worried about him. This has
21 impacted them and their reputation in their small community.
22 Now, in terms of general deterrence, you know, I understand,
23 like, the need for that, but here's the thing. You have to
24 weigh that against COVID, the pandemic, his health issues, the
25 comparative sentencing analysis, what benefit would come from

1 sending David Klepadlo to prison in comparison to the cost of
2 it or the serious risk of it, and that's -- I would submit to
3 you, Your Honor, that I think the cost of it outweighs any
4 benefit of fulfilling the goals of sentencing. I think the
5 least restrictive sentence here is a lengthy period of home
6 confinement. Now, the other thing I want to mention -- and you
7 may want to address this later -- I don't know if the
8 government is still requesting restitution. But I would like
9 to respond to that if that comes up.

10 And I would also like to point out that his -- David
11 Klepadlo's company is not operating. There's no money. So
12 there's -- there's no real ability to pay a fine at least from
13 the company's perspective. And I also wanted to let the Court
14 know that Dave Klepadlo has a follow-up appointment at Penn on
15 November 23rd, which I sent to probation. There's a chance
16 that he's going to need another ablation at some point -- not
17 in the near future. We don't -- we don't know. And his
18 primary care doctor also identified some other serious issues,
19 and he's been referred to a vascular surgeon and he will be
20 seeing the surgeon on November 3rd. I would like to you
21 consider those two things. Do you have anything?

22 MR. BERGERE: Your Honor, if I may, Tim Bergere
23 again. I wanted to address again to put it into context
24 because the government's memos conflate quite a bit of the
25 conduct and also get into this issue of what is relevant

1 conduct. Quite a bit -- nearly all of the documentation the
2 government has submitted relate to periods of time that are
3 well past January of 2014 and the time for which he was
4 acknowledging guilt for P. H. and in his own mind what he was
5 dealing with was P. H., and the government has included memos
6 from some guy named Ed Gillette, who came in to take over the
7 plant many years later. At that time it was actually under the
8 operation of another operator, the Bruce Evans Jr., at that
9 time. And there's just as many sample results that show
10 compliance.

11 One of the reasons Mr. Long, for instance, did not
12 rely on any of the D. M. R. reports sampling was because most
13 -- every single one of them demonstrated compliance. Some did
14 not. There was actually -- during the D. M. R. some reported
15 there were exceedances from time to time. It's the nature of
16 the sewage treatment plant operation that there will
17 occasionally be exceedances. What Mr. Klepadlo failed to do
18 was to require Mr. Sheposh's employee, who was the operator
19 with the plaque hanging on the wall -- -

20 THE COURT: I have to tell you in all honesty you can
21 continue, but I think you're hurting yourself.

22 MR. BERGERE: Okay.

23 THE COURT: I don't think -- I don't think that
24 blaming it on Mr. Sheposh --

25 MR. BERGERE: No, I don't blame Mr. Sheposh. We

1 fully accept responsibility.

2 THE COURT: -- or mitigating relevant conduct over a
3 long period of time is in any way beneficial. Strategically if
4 you wanted to say that, I would have started with you and ended
5 with counsel's arguments. You can continue on if you want.

6 MR. BERGERE: No need to.

7 THE COURT: I don't think you're helping yourself.

8 MR. BERGERE: My main point was just to deal with the
9 government's evidence being several years later. Thank you.

10 THE COURT: Anything else from counsel?

11 MS. LOWRY: No, Your Honor. May I have a chance to
12 respond if something new comes up?

13 THE COURT: Yeah, usually we want you to tell us
14 whatever you're going to tell us now --

15 MS. LOWRY: I have exhausted my arguments.

16 THE COURT: Mr. Klepadlo, anything you wish to say
17 before I impose sentence? You can slide your mask down if you
18 wish.

19 THE DEFENDANT: Yes, sir. Your Honor, I'm sorry for
20 what transpired here. I submitted a letter that summarizes my
21 remorse for what happened here. I apologize to the Court,
22 community and my family. I am genuinely sorry for what
23 occurred here. That's all I have, Your Honor.

24 THE COURT: All right. I just so the record is
25 clear, I have read everything involved in this case, every

1 letter, every document, everything. It's my practice. That's
2 what I did. And I always -- I am interested when people
3 apologize to the Court, and it's, like, you don't have to
4 apologize to me. Your apology to your family makes sense
5 because you have hurt your family in doing this in the long run
6 and to the community because clean water is something we have
7 to do. So those apologies I think make sense. All right.
8 Counsel for the government?

9 MR. HARRELL: Thank you, Your Honor. With regards to
10 restitution, as the presentence report makes clear, the
11 government is not seeking restitution.

12 THE COURT: There are civil cases --

13 MR. HARRELL: There's a civil case. We will let that
14 play out. That's not an issue. With regard to the variance
15 and the sentence the government is seeking in this case, we
16 shouldn't be here today. Nobody should be here today. Mr.
17 Klepadlo is a licensed professional engineer. He was a
18 licensed waste water treatment plant operator. He ran a
19 successful business. We're here today because he didn't follow
20 the law, and it's a sad day. I wish we weren't here, but we
21 are.

22 And with regards -- let me address the variance
23 aspects of the argument, and I will talk about the government's
24 sentencing recommendation. With regards to harm, we have been
25 through that. It's the same factors that were discussed in the

1 guided departures, so I will not focus that much on it. But
2 the analysis is the same. The parties just have a fundamental
3 disagreement whether it's about relevant conduct that should be
4 considered, whether it's about the risk that was presented in
5 this case, the actual harm. The parties have outlined those in
6 their sentencing memos. This was conduct that went on for 20
7 years by the defendant's own admission to agents. D. E. P.
8 told him repeatedly sample every day, only put real sample data
9 on your D. M. R.s. He ignored them. He knew better. He
10 didn't see the need. He's being paid by rural municipalities
11 to perform a job.

12 It's just not coming out in sampling every day.
13 Plants need operation and maintenance. They need regular care.
14 They are not just on auto pilot. It wasn't just a matter of
15 Mr. Klepadlo or Mr. Sheposh coming to take a sample. It's
16 looking at what's going on at the plant. The photos we have
17 shown over a period of four or five years and the other
18 evidence show that. You have to come out. You are getting
19 paid to come out every day. You are getting paid by rate
20 payers and municipalities who are relying on his expertise and
21 his expertise alone.

22 The other thing I want to mention with regards to the
23 variance in particular was again going back to the nature of
24 the self-reporting system that's at the heart of the Clean
25 Water Act. On the front of every D. M. R. there's a block that

1 says you are subject to criminal penalties if you provide false
2 information, and he signed those month after month, year after
3 year knowing he wasn't doing what the permit required. And
4 that's on him. That's why we're here today and his failure to
5 operate and maintain. D. E. P. inspectors should not have to
6 come in E. P. A.'s criminal investigation program to bring
7 facilities into compliance. That's just -- shouldn't happen
8 with someone of his expertise. And that's sort of at the core
9 of why we're here and the government's arguments about why Mr.
10 Klepadlo needs to go to prison. And I wish I wasn't here
11 saying that.

12 But if not him, who is going to go to jail? The
13 cases the defendants cite mostly but not exclusively -- and I
14 am familiar with the facts on a number of them deal with low
15 level operators who cooperated with the government. That is
16 not the fact pattern here. There is no disparate sentencing
17 argument here. What sort of is getting lost in the
18 environmental issue --

19 THE COURT: When you say cooperated with the
20 government, do you mean after they were arrested, they were --
21 they admitted their guilt as opposed to challenged their guilt?
22 What exactly do you mean by cooperate?

23 MR. HARRELL: When they were approached and notified
24 they were the subjects of investigations, they came in and
25 cooperated with the government, prepared to testify against

1 others --

2 THE COURT: In all those cases?

3 MR. HARRELL: Not all of them because I haven't
4 researched them. I can tell you that as we point out in our
5 sentencing memo the ones that either or Ms. Miller, my
6 colleague at E. P. A. served as special assistant U.S.
7 attorneys, the low level operators came in. They were not the
8 owners --

9 THE COURT: I read that in your sentencing memo.

10 There was three of those that the two of you had some
11 involvement --

12 MR. HARRELL: Three different cases, and so --

13 THE COURT: There seems to me a significant number
14 more where the ultimate sentence was certainly significantly
15 less than 37 months.

16 MR. HARRELL: Your Honor, I think that points out
17 another distance. Counsel pointed out to -- again, this is a
18 D. M. R. case, it's not a case of illegal discharges into the
19 environment. We just completely disagree with that.

20 THE COURT: You don't have to argue that. I have no
21 problem with the fact that the relevant conduct here relates to
22 the entire activity and not merely the idea of what we're able
23 to negotiate in terms of our plea for purposes of counts, you
24 know, four and -- counts one or counts four, whatever the two
25 counts are that -- that's not of significant concern to me.

1 It's clear relevant conduct incorporates the relevant conduct
2 of the activity involved and always has in the federal system
3 as approved by the Supreme Court. So go ahead.

4 MR. HARRELL: Again, Mr. Klepadlo owns his own
5 company. He decided how many employees he hired. If he didn't
6 have enough employees to do what he contracted with others to
7 do, again, that's on him. It's clear from the taped
8 conversations that and the conversations with D. E. P.
9 inspectors he saw himself at a different level knowledge wise
10 and every other way. Again, going back to the obstruction of
11 justice, after he -- after the investigation started, not once,
12 but at least twice he went to his employee and tried to get him
13 to lie to federal agents. This is not just an environmental
14 case.

15 This is an obstruction of the federal criminal
16 justice system. That is borne out as he described to himself
17 to the letter to the Court that he was arrogant. He was
18 arrested, brought in for his initial appearance. The
19 magistrate spent time going over with him he that he could not
20 --

21 THE COURT: There are no magistrates in the federal
22 system. You mean the magistrate judge?

23 MR. HARRELL: Magistrate judge, Your Honor. Sorry.

24 THE COURT: 1991 they changed that title for that
25 reason. That was 30 years ago.

1 MR. HARRELL: My apologies, Your Honor. The
2 magistrate judge pointed out to him don't go contacting any
3 witnesses, and it was only a matter of hours he was right back
4 talking to his employee and had to be rearrested again.
5 Perhaps there is a -- that much of a need for specific
6 deterrence here. But again, you look at the number of cases
7 involving waste water treatment plant operators who were
8 cheating on the reporting obligations. Here we have the owner
9 of a company self-admittedly doing it for 20 years. This is
10 not a one-and-done situation. He was -- he misled his
11 employers, his clients by telling them everything was fine,
12 look at my sampling data.

13 As you point out, his own consultant could not use
14 his data to formulate the expert opinion that the defense
15 relies on. And he seeks to take advantage today of the lack of
16 the data by saying, well, there's no evidence of harm. Well,
17 there's no data because he didn't go out and get it. He just
18 made it up. The last thing I just want to say about this case
19 is his letter to the Court and his filings he spends a
20 considerable amount of time talking about his efforts to help
21 Mr. Sheposh. And if you read the government's sentencing memo,
22 your first one --

23 THE COURT: I did.

24 MR. HARRELL: I am sure you have. He's affirmatively
25 urging his witness to lie, to mislead agents. And this is just

1 a pattern of his conduct for 20 years, I know better, no one
2 will tell me what I have to do. But more importantly for all
3 of the waste water treatment plant operators and the owners of
4 contract companies such as his, there needs to be a deterrent
5 message here, and home confinement simply is not enough. Thank
6 you.

7 THE COURT: Let me ask you what your position is on
8 the likelihood of Mr. Klepadlo recidivating.

9 MR. HARRELL: I would say it's small. Defense
10 counsel mentioned that he had surrendered his license. The
11 reality is he has to get that license renewed, and D. E. P.
12 once he pled guilty, the chances that he would have gotten his
13 license renewed --

14 THE COURT: I get the licensing factor. In terms of
15 --

16 MR. HARRELL: Him personally, I would say the odds
17 are small because he's not going to be in that business
18 anymore. Thank you, Your Honor.

19 THE COURT: Thank you. Anything else you want to add
20 related to that?

21 MR. BERGERE: I think as a point of reference I think
22 mistakenly said Mr. Klepadlo had signed all of the D. M. R.s.
23 He had not actually signed any of them, but --

24 MS. LOWRY: Yeah, Your Honor, just for the record,
25 this is not --

1 THE COURT: You're referring to his employee that
2 signed it?

3 MS. LOWRY: Yes.

4 THE COURT: Who would be an agent, all right --

5 MS. LOWRY: Of course. Exactly. He said that David
6 Klepadlo signed it. I just want to clear this up. The D. M.
7 R. underlies count four -- Dave's employee signed. David
8 Klepadlo is taking responsibility, and he's not -- he's not
9 shifting blame to his employee. He understands his name is on
10 the door. The point of even bringing up his employee is to
11 provide the Court with context regarding the nature and
12 circumstances of the offense because that is what we do at
13 sentencing. We're not intending to shift blame. I just want
14 to clear that up.

15 THE COURT: All right. Lawyers always have a
16 tendency to argue the minutia on both sides. And while I
17 appreciate that, and I probably would have done that as well,
18 for me the perspective is more overall looking at all the
19 circumstances and factors. As I mentioned, I have read very
20 thoroughly the presentence report in the case, the addendum to
21 the presentence report, in addition to that, the letters that
22 were filed, the sentencing memorandum of counsel that were
23 filed and the exhibits that were attached to those memorandums.

24 I always take knowledge of the fact that I'm
25 presently sitting in the courtroom that Judge Conaboy sat in

1 for forever. I don't formally sit in this courtroom, but they
2 are doing something to mine. But I have a distinct
3 recollection of him saying virtually every time there was a
4 sentence that it's the hardest thing that we do as judges. And
5 I remember sitting there for the most part as a prosecutor
6 thinking what is sort hard about it, just sentence the guy.
7 Now I realize how correct he was because at the end of the day,
8 of course, nobody is happy, and there's no way for me to read
9 the future to figure out what will or won't happen in any
10 regards.

11 So it is a very difficult process because I know it
12 involves a lot of human factors and people and their family.
13 You know, the -- this is a very -- I have read through this
14 stuff. I can't tell you how many occasions I have read through
15 this stuff. It's really such a disappointing case in so many
16 ways. Your conduct, Mr. Klepadlo, is truly offensive whether
17 it was arrogance or laziness or whatever it may be, it truly
18 was offensive. The fact you were getting paid -- I forgot the
19 exact amount -- but around 50 grand a year from these
20 municipalities to just go and check . You know, that -- when
21 they put the video up, I think in -- as I recollect in
22 Greenfield it was something like 116 days of which somebody
23 showed up on, like, 16 days or something like that and tests
24 were taken on seven of those days. Jeepers. And then the
25 numbers were slightly less I think in -- or somebody showed up

1 a little bit more in Benton, but the numbers were just
2 incredible.

3 And there was significant arrogance here when you
4 were questioned about it or told about it in that, you know,
5 this is what I've been doing for 20 years, this is what I
6 always do. I know better than you. You know, our clean water
7 and clean air are clearly under attack at the highest levels of
8 government right now, and we all need to breathe and drink the
9 stuff on this planet if we're going to have a planet. You
10 know, you said before -- one of the questions you asked Mrs.
11 Klepadlo was Mr. Klepadlo perfect. Of course her answer was,
12 no, he's not perfect, nobody is perfect. I always think my
13 grandchildren are perfect, and I would like there to be a
14 planet for them at some point in time when they get old enough
15 to enjoy it.

16 And I am concerned about what we're doing to the
17 planet, and your activities were really not helpful. I do
18 think it was in -- in your own words an arrogance. I know
19 better than you, I can do what I want to do, I don't have to
20 listen their bureaucracy. The heck with their bureaucracy.
21 That part is really concerning and the amount of water that
22 ultimately was discharged that went in there. No, it's a very
23 conservative estimate over the -- the period of time -- if you
24 go longer, it's just significantly bigger than that roughly 8
25 million gallons over the periods involved in the indictment

1 alone were flowing in there, and testing was an insignificant
2 amount of that if there was any testing. That's really
3 terrible on your part. It's frankly terrible.

4 The other side of the coin is the government -- the
5 guidelines are what the guidelines are, and your obstruction is
6 really bothersome, too, although I have seen much worse
7 obstruction in federal court than what you did. That being
8 said shortly after Judge Mehalchick had specifically advised
9 you, you are not to have any contact witness, victim, within
10 hours you called up that guy and tried to fix his arguments not
11 knowing that he had spoken with or was involved with the F.B.I.

12 That's concerning. It does put this in a little
13 different twist than the cases that don't have that kind of
14 affirmative obstruction. That being said, the guidelines, you
15 know, in this case are 37 to 46 months. I find the government
16 -- I understand their recommendation within the guidelines. I
17 find it to be again kind of like the bureaucratic cookie cutter
18 that's the guidelines so we will argue the bottom of the
19 guidelines. I don't find it that it considers all of the human
20 factors involved in the case, not much of which is beneficial
21 to you in terms of your activities in the case. But it's my
22 job to try to view all of the factors.

23 And I have considered those. You know, the problem
24 with personal tragedies are that in every case I sentence --
25 every sentence I sentence, the family ends up being punished

1 even though no one wants to punish the family. Every single
2 case. The same thing happens in that regard that family
3 members who did nothing wrong effectively end up being punished
4 because of the family member that did something wrong. And so
5 that's really concerning to me here. I have looked at those
6 cases, not all of them, but I looked at some of the cases cited
7 from the 26 or so you cited related to -- the defense cited to
8 other sentences.

9 I do find a sentence of 37 months would be an
10 unwarranted disparity in this case. I disagree with the
11 government's articulation that it wouldn't be a disparity. I
12 think it would be a disparity in the case, and I think that for
13 the most part you received your additional two points for
14 obstruction. So under the guideline calculation and -- you got
15 your two points, and so the bottom line is that is incorporated
16 into -- into, you know, how that's viewed. But if you took
17 that two points away, you know, your sentence would now be
18 something like 30 to 37 months, which would be the sentencing
19 guideline in theory that most of those other individuals had
20 that received something other than an incarceration sentence.

21 And so I am not so sure that two-point difference
22 while it clearly has some significance is not of terrible
23 significance. I also have to consider -- and I appreciate Dr.
24 Quinn's words as well as Mrs. Klepadlo's words in the case.
25 I'm also -- I have to -- I can't not consider in today's world

1 COVID-19, and I am considering that. The problem again turns
2 out just like every sentence an individual makes an argument of
3 how this is going to negatively effect their family and be --
4 and their family will be punished, and that's true in every
5 case. Similarly, in today's world every sentencing involves an
6 argument because of COVID-19 I shouldn't go to jail because,
7 you know, I may get infected. You are a little bit of
8 different circumstance I have to admit. I have looked
9 carefully at the medical information this was sent to me.

10 I note as a side note that there have been an article
11 some months ago or probably a month ago my wife brought to my
12 attention, who is also a medical professional, that I think it
13 was the Big Ten or one of the football conferences. They had
14 done a study of students who are on the football team -- teams
15 who had tested positive but had no symptoms and because kids at
16 that age are generally invulnerable -- they get a little chill,
17 and that's end of it for many of them, not all of them, but for
18 many of them. They noted upward of 60 percent of them after
19 testing positive with no apparent side effects or symptomology
20 had heart concerns after that, that they had found some
21 irregularities as to congestive heart failure around their
22 heart, which was very interesting. She pointed that out just
23 -- I just say it not related to this case in any way but in
24 general.

25 I looked very carefully at your medical records. You

1 had the heart attack, valve replacement. It's described as an
2 open procedure. Was it a TAVR, or was it -- it was an open
3 procedure -- and the ablation, which was partially successful.
4 And all of those factors are factors that I feel compelled to
5 take into consideration as well in deciding what is an
6 appropriate sentence in your particular case.

7 That's part of my job to make a determination of the
8 particular case. On the facts of the case itself, one of the
9 things I need to consider under 3553 is the nature and
10 circumstances of the offense. That doesn't play well for you.
11 It's a bad offense. It does -- potentially affects other
12 people. I agree with the government's perception of the fact
13 that since many of these plants are run by people who are
14 really under the honor system that it's impossible to hire
15 enough inspectors to be sitting at every plant. They expect
16 the true professionals at those plants will be honest and show
17 integrity. You failed to do that over a long period of time.
18 The nature and circumstances of the offense don't work well for
19 you at all.

20 The Court also has to consider the need to impose a
21 sentence to reflect the seriousness of the offense, promote
22 respect for the law and provide just punishment for you. That
23 includes to protect the public from further crimes by you. In
24 that regard it probably works in your favor because my -- I
25 said I can't read the future -- my expectation is that this

1 would be an experience that you would not want to go through
2 again and so the result was that I would find it very hard to
3 believe under your age and station in life that you would be
4 involved with any criminal activity. So part of what the Court
5 needs to do is to impose a sentence to deter you, and I don't
6 know that I necessarily need to do that. I think this process
7 has worked. It's also to consider a sentence that helps deter
8 others from conduct like yours.

9 That's a little more problematic and concerning.
10 It's also -- the Court needs to impose a sentence under the
11 statute that deals with your educational, vocational and
12 medical needs. The educational and vocational are not of
13 particular concern. The medical need is of concern under your
14 present health circumstances and the COVID epidemic that's
15 ravaging the country and on a spike as we sit here now. I also
16 have considered -- although maybe this is not something I am
17 technically supposed to consider.

18 I have also considered the your oldest daughter and
19 her condition as well and the fact that she is now dependant
20 upon you and your wife, who are both retired. And I think that
21 -- I know that on more than one occasion probation has
22 indicated to me your requests which were granted to travel
23 outside of the district for purposes of medical appointments
24 related to your daughter as well. So I've tried to consider
25 all of those factors in deciding what is an appropriate

1 sentence in your case. And I -- I have listened very carefully
2 to the arguments of counsel in the case. While I respect
3 everybody's positions, at the end of the day the responsibility
4 for deciding a sentence is really mine and mine alone, and I
5 take that responsibility seriously.

6 So with respect to you, Mr. Klepadlo individually,
7 pursuant to the Sentencing Reform Act of 1984, it is the
8 judgment of the Court that the defendant, David D. Klepadlo, is
9 hereby committed to the custody of the Bureau of Prisons for a
10 term of time served. You will be on supervised release for a
11 period of three years, and during that period of supervised
12 release, you are going to be on home detention for a period of
13 one year. During that period of time, there will be provisions
14 made for you to attend medical appointments, work if that
15 becomes something that you find employment, religious services,
16 necessary food and other outside activity. But aside from
17 that, you will be confined to your home during that period of
18 time. You may request from the probation office permission to
19 leave for other matters that I have considered here, and they
20 will make an appropriate judgment based upon that.

21 It's ordered you shall pay to the clerk of the U.S.
22 District Court a special assessment in the amount of \$100.
23 That's due immediately. You individually I'm making a finding
24 do not have the ability to pay a fine. So a fine is waived.
25 The defendant shall be placed on supervised release, as I said,

1 for a period of three years. While on supervised release, you
2 shall not commit another federal, state or local crime, and you
3 shall not possess a dangerous weapon.

4 The defendant shall comply with the standard
5 conditions that have been adopted by the Court and the
6 following special conditions. You must cooperate in the
7 collection of a DNA sample as directed by the probation
8 officer. You must not incur -- you must continue in your --
9 during the course of your supervised release period in your A.
10 A. activities, and if requested by the probation officer, you
11 must submit to random alcohol testing to make sure that you are
12 in compliance with that, and you must comply as they deem
13 appropriate with any additional treatment or treatment provider
14 activities related to that particular condition.

15 I'm going to find you pose a low risk of future other
16 substance abuse, and so, therefore, I am going to suspend the
17 mandatory drug testing that would be involved in your case.
18 Now, with you individually, one can normally appeal their
19 conviction if they believe their guilty plea was somehow
20 unlawful or involuntary or there was some other fundamental
21 defect in the proceedings that was not waived by the guilty
22 plea itself.

23 One also normally has a statutory right under certain
24 circumstances to appeal their sentence particularly if they
25 believe that the sentence is contrary to law. However, a

1 defendant may waive or give up those rights as part of a plea
2 agreement. In this particular case you have waived your right
3 to appeal your plea of guilty and your sentence in this
4 particular case. Such waivers are generally enforceable. If
5 you believe for some reason the waiver is unenforceable, you
6 may offer that argument to the Third Circuit. With few
7 exceptions, a notice of appeal must be filed within 14 days of
8 the date that sentence is imposed. Today is the 28th of
9 October.

10 So if you wish to file a notice of appeal, it would
11 have to be filed on or before November 12th of 2020. If you
12 are unable to pay costs of appeal but wish to appeal, you may
13 apply to appeal in forma pauperis. If you do that, the clerk
14 of court will prepare and file a notice of appeal on your
15 behalf. Do you understand all of that, Mr. Klepadlo?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: With respect to the corporation's
18 sentencing, again, pursuant to the Sentencing Reform Act of
19 1984, it is the judgment of the Court that the defendant David
20 D. Klepadlo Associates, Inc., is hereby placed on probation for
21 a period of five years. The Court finds that the defendant
22 does have the ability to pay a fine, the corporate defendant,
23 and it's ordered that the defendant shall pay to the clerk of
24 the U.S. District Court a sum of \$10,400 consisting of a
25 special assessment of \$400 and a fine of \$10,000. The special

1 assessment is due immediately. Payment of interest is waived
2 on the fine.

3 While on probation, the defendant organization shall
4 not commit another federal, state or local offense, and the
5 defendant shall comply with the standard conditions that have
6 been adopted by the Court and the following special conditions.
7 Again, this relates to the corporation. The corporation must
8 not incur any new credit charges or open additional lines of
9 credit without the approval of the probation officer. The
10 corporation must provide the probation office with access to
11 any requested financial information and authorize the release
12 of any financial information.

13 The probation office may share that information with
14 the United States Attorney's Office. The corporation must
15 comply -- apply all moneys received from income tax refunds,
16 lottery winnings, judgments or any anticipated or unexpected
17 financial gains to the outstanding court-ordered obligations.
18 If the judgment imposes a financial penalty, which it does, you
19 must pay the financial penalty in accordance with the schedule
20 of payment sheets on this judgment. You must also notify the
21 Court of any changes in the corporation's economic
22 circumstances that might affect the ability to pay that
23 financial penalty.

24 The law requires that -- as I recollect that
25 corporate matter fines need to be paid within five years of the

1 time that they are imposed, and they should be paid within the
2 five years of the probation, which would be 60 months, which
3 would make it something like \$150 a month would have to be
4 minimum that was paid over the period of probation. So it must
5 be paid in monthly installments of no less than \$150. I will
6 rephrase that and -- I don't know -- the calculation, the
7 \$10,000 and divide it by 60 months and round up to the next --
8 I should have looked at this in advance, and I didn't -- \$175 a
9 month over the period of -- no less than 175 a month over that
10 period of time.

11 Again, with respect to the corporation, one can
12 normally appeal their conviction if they believe their guilty
13 plea was somehow unlawful or involuntary or if there was some
14 other fundamental defect in the proceedings that was not waived
15 by the guilty plea itself. One can also have -- one also has
16 normally a statutory right to appeal the sentence in certain
17 circumstances particularly if they believe the sentence is
18 contrary to law.

19 Again, a defendant can waive that right as part of
20 the plea agreement. The corporation has, in fact, waived that
21 right as part of its plea in this particular case. Those
22 waivers are normally enforceable. If you believe that it is
23 unenforceable, you may present that theory to the appellate
24 court. Normally a notice of appeal must be filed within 14
25 days of the date that sentence is imposed. Again, today is

1 October 28th, 2020. If you wish -- or the corporation wishes
2 to file a notice of appeal, it must do so on or before the 12th
3 day of November 2020. If the corporation was unable to afford
4 the costs of an appeal but wish to appeal, it may apply to
5 appeal in forma pauperis. If it did that, the clerk of court
6 would again prepare and file that notice of appeal. With
7 respect to the remaining counts in the indictment, is there a
8 motion by the government?

9 MS. OLSHEFSKI: Yes, Your Honor. The government
10 moves to dismiss the remaining counts in the indictment against
11 the defendant and the corporation.

12 THE COURT: All right. I assume there's no
13 objection?

14 MR. BERGERE: No objection.

15 THE COURT: The motion is granted. The remaining
16 counts against the defendant and the corporation are dismissed
17 on motion of the government. Anything else we have from the
18 government?

19 MS. OLSHEFSKI: No, Your Honor.

20 THE COURT: The defense?

21 MS. LOWRY: No, Your Honor.

22 MR. BERGERE: No, Your Honor.

23 THE COURT: Good luck to you, Mr. Klepadlo.

24

25

1 REPORTER'S CERTIFICATE
2

3 I, Laura Boyanowski, RMR, CRR, Official Court Reporter for
4 the United States District Court for the Middle District of
5 Pennsylvania, appointed pursuant to the provisions of Title 28,
6 United States Code, Section 753, do hereby certify that the
7 foregoing is a true and correct transcript of the
8 within-mentioned proceedings had in the above-mentioned and
9 numbered cause on the date or dates hereinbefore set forth; and
10 I do further certify that the foregoing transcript has been
11 prepared by me or under my supervision.

12

13

14 s/ Laura Boyanowski, RMR, CRR
15 Laura Boyanowski, RMR, CRR
16 Official Court Reporter

17 REPORTED BY:

18 LAURA BOYANOWSKI, RMR, CRR
19 Official Court Reporter
20 United States District Court
21 Middle District of Pennsylvania
22 235 N. Washington Avenue
23 Scranton, PA 18503

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